

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANDRE SMITH,

Plaintiff,

v.

DECISION & ORDER

07-CV-6265CJS

COMMISSIONER GLENN GOORD, et al.,

Defendants.

On May 24, 2007, *pro se* plaintiff Andre Smith (“plaintiff”) filed a complaint pursuant to 42 U.S.C. § 1983 alleging that the defendants committed various constitutional violations, including retaliation, excessive force and failure to protect the plaintiff from harm. (Docket # 1). On February 11, 2008, plaintiff’s claims against Commissioner Goord and Acting Superintendent McNamara were dismissed. (Docket # 19). On August 31, 2009, plaintiff’s Eighth Amendment excessive force claims against Officer Augustine, Officer Gilbert and Officer Hable were dismissed. (Docket # 56). On February 28, 2012, all of plaintiff’s remaining claims were dismissed (Docket # 66) and judgment dismissing the complaint in its entirety was entered on February 29, 2012. (Docket # 67). On July 17, 2012, plaintiff filed a notice of appeal. (Docket # 71). On that same date, plaintiff filed the pending motion to appoint appellant counsel. (Docket # 72).

Plaintiff’s motion for appointment of counsel seeks counsel to assist him with his appeal and was filed the same day that plaintiff filed a notice of appeal. “[T]he filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.”

Motorola Credit Corp. v. Uzan, 388 F.3d 39, 53 (2d Cir. 2004) (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982)), cert. denied, 544 U.S. 1044 (2005). Thus, plaintiff's "notice of appeal divests this Court of jurisdiction to consider his motion for the appointment of appellate counsel." *McBride v. Lafler*, 2012 WL 3578736, *2 (E.D. Mich. 2012); see *Ashley v. Wilson*, 2010 WL 1949630, *1 (E.D. Mich. 2010) (denying motion for appointment of appellate counsel because only court of appeals had authority to appoint appellate counsel); see *Stevenson v. Gusman*, 2009 WL 1421842, *1 (E.D. La. 2009) (no jurisdiction to determine motion to appoint appellate counsel). Accordingly, plaintiff's motion for the appointment of counsel (**Docket # 72**) is **DENIED**.

IT IS SO ORDERED.

s/Marian W. Payson

MARIAN W. PAYSON

United States Magistrate Judge

Dated: Rochester, New York
February 14, 2013